

Message

From: Yannayon, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0EC245483F2D4762801CD01D01220F92-LYANNAYO]
Sent: 5/13/2019 9:14:28 PM
To: Parent, Stephanie@ARB [stephanie.parent@arb.ca.gov]
Subject: RE: Office of Administrative Law (OAL) question

Hi Stephanie,

This actually pertains to infrastructure SIP requirements. In 2017, EPA updated provisions of our modeling guidelines found in Part 51 appendix W. Some air agencies (I believe not CA), formally IBR Part 51 Appendix W into their rules (See NV). Instead most CA Districts (I believe) satisfy the requirements of 40 CFR 51.160(f)(1), by providing language similar to what BA did below:

Example from BAAQMD Permit Rule 2-2:

305.3 Air Quality Models: All estimates of ambient concentrations required under this Section shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of Part 51 of Title 40 of the Code of Federal Regulations (Guideline on Air Quality Models). Where an air quality model specified in Appendix W is inappropriate, the model may be modified or another model substituted upon written approval by the APCO after public notice and opportunity for public comment under the procedures set forth in Section 2-2-404. Where modeling is conducted solely to evaluate compliance with a California air quality standard, any APCO-approved model may be used.

To me, this is clearly not an IBR provision. But the question is, what version of Appendix W does this provision apply to? The version of Appendix W in effect on the date the rule was adopted or the most current version of Appendix W when a district goes to use it for a project? While many are included to say it locks in the version as of date of adoption, note that there is no date included in the provision that only references EPA's guidance to be used. And if this were to only apply to the version as of the date of adoption, then would the same thing apply to the numerous test method references in RACT rules? If these is locked in as of date of adoption, then a lot (by my count 21 NSR rules and 14 PSD rules in CA), will need to be updated to account for this updated version of Appendix W.

Someone from my office pulled up an OAL reference that said that discussed IBR in state regulations. It goes far beyond what I typically see in District rulemakings, so it made me wonder if OAL was the right authority for weighing in on issues of District rules. Thus my question to you.

- Just for FYI, here is the link my coworker provided: <https://oal.ca.gov/wp-content/uploads/sites/166/2017/05/2008-0305-015.pdf> (see page 4)

Laura

From: Parent, Stephanie@ARB <stephanie.parent@arb.ca.gov>
Sent: Monday, May 13, 2019 1:57 PM
To: Yannayon, Laura <Yannayon.Laura@epa.gov>
Subject: RE: Office of Administrative Law (OAL) question

Hi Laura,

Let me research and check in with our legal staff on this and get back to you. When do you need a response by?

Also, I'm curious, and I might be asked, what are the issues HQ is having related to California district rules?

Thanks.

Steph



Stephanie Parent,
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The climate change challenge facing us is real. For a list of simple actions you can take to reduce your environmental impact, visit www.CoolCalifornia.org.

From: Yannayon, Laura <Yannayon.Laura@epa.gov>
Sent: Monday, May 13, 2019 1:15 PM
To: Parent, Stephanie@ARB <stephanie.parent@arb.ca.gov>
Subject: Office of Administrative Law (OAL) question

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Hi Stephanie,

Do you know if District rules are subject to review by the OAL? Also, are District rules required to comply with the CA Administrative Procedure Act? Finally, do you know if CA or CARB has any guidance to the Districts about adopting provisions into their rules by using incorporation by reference?

Any answers/thoughts you might have on all three of these questions would be greatly appreciated as we are trying to figure some issues out for HQ related to CA District rules.

Thanks,
Laura